



**Federal Communications Commission
Washington, D.C. 20554**

August 27, 2008

DA 08-1988

In Reply Refer To:

1800B3-SS

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Ithaca Community Radio, Inc.
P.O. Box 6782
Ithaca, NY 14851

Ithaca College
c/o Donald E. Martin, Esq.
P.O. Box 8433
Falls Church, VA 22041

Mr. Darin Johnson
1272 Earl Hill Road
Penn Yan, NY 14527

Re: **NEW(FM), Watkins Glen, NY**
Facility ID No. 173670
BNPED-20071018AGB

Petition to Deny

Informal Objection

Dear Applicant, Counsel, and Mr. Johnson:

We have before us the above-captioned application of Ithaca Community Radio, Inc. ("ICR") for a construction permit for a new noncommercial educational ("NCE") FM station to serve Watkins Glen, New York (the "Application"). We also have before us: (1) a two-page letter received November 26, 2007, opposing the Application, filed by Darin Johnson ("Johnson"), which will be treated as an Informal Objection (the "Johnson Objection")¹ in accordance with Section 73.3587 of the Commission's Rules (the "Rules");² (2) a December 14, 2007, Petition to Deny (the "Petition") filed by Ithaca College (the "College"), licensee of NCE station WICB(FM), Ithaca, New York; and (3) a two-page letter received June 24, 2008, opposing the Application, filed by Ray Smith ("Smith"), which will be treated as an Informal Objection (the "Smith Objection") in accordance with Section 73.3587. ICR filed separate Oppositions to both the Johnson Objection and the Petition on May 1 and 8, 2008, respectively.³ For the

¹ On May 13, 2008, the staff mailed a letter to all parties requesting that ICR respond to Johnson's Objection which the staff, in error, believed had not been served on ICR. Johnson states that upon receipt of this May 13, 2008, correspondence, he learned that an objection had been filed in his name. *See* n.5, *infra*.

² 47 C.F.R. § 73.3587.

³ ICR requests that the staff grant it leave to file its untimely Opposition to the Petition.

reasons set forth below, we dismiss the Johnson Objection and the Smith Objection; deny the Petition; and grant the Application.

Background/Discussion. On October 18, 2007, ICR tendered its Application for a new NCE FM station on Channel 220A at Watkins Glen, New York. The College petitioned to deny the Application, arguing that the proposed station's 54 dBu interfering contour would overlap the area where its first-adjacent channel station WICB(FM)'s signal is at or greater than 60 dBu. The College argues, therefore, that the application should be dismissed pursuant to Section 73.509 of the Rules because, if implemented, ICR's station would cause impermissible interference with WICB(FM)'s signal.⁴

On November 26, 2007, an individual identifying himself as "Darin Johnson," filed a signed letter objecting to the Application, making numerous allegations.⁵ On June 4, 2008, counsel for ICR filed a letter dated May 29, 2008, faxed to her by Johnson stating under penalty of perjury that he "never raised an objection to the placement of a radio tower in Watkins Glen . . . [and that his] name is being used without . . . [his] knowing [sic] and . . . [his] signature has been forged"⁶ Johnson states that he is "not being compensated" and would like his "name cleared of any ties to this matter."⁷ Accordingly, we dismiss the "unsigned" Johnson Objection, pursuant to Sections 1.52 and 73.3587 of Rules.⁸

On June 24, 2008, an individual identifying himself as "Ray Smith" filed an unsigned letter objecting to the Application. Pursuant to Sections 1.52 and 73.3587 of Rules, the original copy of informal objections "shall" be signed.⁹ Accordingly, we also dismiss the unsigned Smith Objection as procedurally defective.^{10 11}

⁴ 47 C.F.R. § 73.509. Section 73.509(a) prohibits the 54 dBu interfering signal from causing overlap to the protected 60 dBu signal of a first-adjacent channel station.

⁵ For example, "Darin Johnson" claims that ICR did not run the newspaper notice required by Section 73.3580 of the Rules; did not include in the Application any record of permission to use the transmitter site specified in the Application; and failed to request a waiver of the main studio location rule [47 C.F.R. 73.1125] even though ICR could not house a main studio in Watkins Glen, the proposed community of license.

⁶ See *Letter from Melodie A. Virtue, Esq.*, filed June 4, 2008, at Attachment 1.

⁷ *Id.*

⁸ 47 C.F.R. §§ 1.52 ("The original of all petitions, motions, pleadings, briefs, and other documents filed by any part shall be signed"), 73.3587 (" . . . [informal] objections . . . shall be signed.").

⁹ See n.8, *supra*.

¹⁰ See *Letter to Joseph Isabel*, 22 FCC Rcd 18630 (MB 2007) (objector did not sign informal objection, rendering it procedurally defective under 47 C.F.R. §§ 1.52, 73.3587). Even if we were to consider "Ray Smith's" objections, we would reject them. In the Smith Objection, "Ray Smith" argues that ICR did not file any public notice in any newspapers of its proposal. ICR, however, provides for the record a sworn affidavit indicating that it did file public notice in the Elmira (NY) Star-Gazette. "Smith" also argues that ICR is using its FM translator station (W201OD, Lansing, NY) to raise funds for its proposed community radio station as well as its translator station beyond the costs related to installation, operation and maintenance of the translator, in violation of Section 74.1231(g) of the Rules. ICR provides for the record a board member's declaration, made under penalty of perjury, stating that ICR does not violate the Rules in any of its fundraising activities on its translator station. "Smith's" general and unsupported allegations alone do not warrant further inquiry. We reject these arguments on the basis of lack of evidence. See *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested); see also *Letter to William L. Zawila, Esq. and Sandra Soho*, Ref. No. 1800B3 (MMB rel. Feb. 4, 1999) (staff denied informal (continued . . .)

The College's Petition to Deny. The Application specifies that there will be no predicted interference to the College's first-adjacent channel Station WICB(FM) caused by the proposed station.¹² In its Petition, the College seeks to demonstrate that interference will actually occur to WICB(FM) using a supplemental engineering showing incorporating the Longley-Rice alternative signal propagation methodology. However, such Longley-Rice showings have not been accepted for the purpose of determining interference between FM broadcast stations.¹³ The College recognizes that the Commission ordinarily would not accept its calculations to "demonstrate FM on FM interference," but "urges the Commission to broaden its use of alternative methods for calculating signal strength."¹⁴ It further states that it "is inconsistent" for the Commission to accept alternative contour prediction methodologies such as Longley-Rice to determine signal coverage in the absence of interference but disallow it to determine the presence of interference.¹⁵

We disagree. As the Commission has stated previously, to employ supplemental showings for FM stations in the manner that the College requests would represent a fundamental change in the way in which applications which are subject to contour protection requirements are processed. This dramatic change in licensing standards could only be adopted through notice and comment rulemaking procedures because it could potentially impact thousands of stations and the manner in which the Commission protects station service areas from interference.¹⁶ Resolving conflicts between competing propagation studies also could significantly slow application processing. Thus, we are in agreement with ICR¹⁷ that this proceeding is not the proper forum for requesting changes in Commission procedures.¹⁸

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objection due to lack of evidence); and *Texas Educational Broadcasting Co-Operative, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 13038, 13045 (MB 2007) (unsupported allegation adequately rebutted by licensee submission supported by affidavit from station employee with responsibility for that matter).

¹² In its Opposition, ICR attaches an Engineering Statement to provide further evidence that its technical proposal fully complies with § 73.509 of the Rules. See Opposition at Exhibit 1.

¹³ See, e.g., *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12402 ¶ 69 (1997) ("Minor Change R&O"); see also *Joseph C. Chautin, Esq.*, Letter, 22 FCC Rcd 5364, 5365 (MB 2007) ("Supplemental showings, have not been accepted, nor will they be, for the purpose of determining interference between FM broadcast stations.").

¹⁴ Petition at 2-3.

¹⁵ *Id.*

¹⁶ See *Minor Change R&O*, 12 FCC Rcd at 12402.

¹⁷ See Opposition at 2.

¹⁸ See, e.g., *Tri-State Broadcasting Company, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3466, 3468 (1997) (Commission states that license renewal proceeding, unlike a rulemaking proceeding, is not the proper forum for requesting changes in Commission procedures).

Conclusion/Actions. Based on the record before us, we conclude that ICR is qualified to hold an NCE FM authorization and grant of the Application would serve the public interest, convenience and necessity. The terms of the grant will be made part of the authorization issued to this applicant.

Accordingly, IT IS ORDERED that the Petition to Deny filed by Ithaca College against the application of Ithaca Community Radio, Inc., IS DENIED. IT IS FURTHER ORDERED that the unsigned Informal Objections filed by Darin Johnson and Ray Smith against the application of Ithaca Community Radio, Inc., ARE DISMISSED.

IT IS FURTHER ORDERED, that the application of Ithaca Community Radio, Inc. (File No. BNPED-20071018AGB) for a new noncommercial educational FM station in Watkins Glen, New York, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Melodie A. Virtue, Esq.